

## Summary of Transaction Structure (Cabo San Lucas Mortgage Loan)

### Project

The project ("**Project**") is located in Cabo San Lucas, Baja California Sur, Mexico. It is comprised of 1,510 acres land ("**Land**") with 1.5 miles of beach frontage along the Pacific Ocean. The master plan for development includes two golf courses, 522 units, two clubhouses and other resort amenities. Funding of the loan includes advances for acquisition and pre-development costs in respect of the land and other costs as set forth on the approved budget. The contemplated improvements to be completed by the Maturity Date (defined below) include (i) engineering, transportation, mechanical and other infrastructure required for the development of the first phase of the Project, including roads and a waste water treatment plant, (ii) a clubhouse, and (iii) the "Dunes" golf course, all as more particularly shown on a master plan and as described in the plans and specifications for the project (collectively, the "**Improvements**").

### Current Debt Structure

**First Priority Senior Mortgage Loan** - On March 10, 2006 Lehman Brothers Holdings Inc. ("**Lehman**" or "**Lender**") loaned to Diamante Cabo San Lucas S. De. R.L. De C.V. ("**Borrower**") the original principal amount of \$125,000,000 ("**Loan**") to be used for acquisition and pre-development costs. The Loan is evidenced by a Promissory Note in the amount of \$125,000,000 from Borrower in favor of Lender ("**Note**"). The Note is secured by, among other things, an Irrevocable Guaranties Trust Agreement ("**Trust Agreement**") encumbering the Land, and an Assignment of Leases and Rents. The terms and conditions of the Loan are set forth in the Loan Agreement by and between Borrower and Lehman ("**Loan Agreement**").

Additionally, the Loan is secured by a Pledge Agreement by Borrower in favor of Lender, encumbering Borrower's contract rights, intellectual property, personal property and other "pledged assets" described therein.

**Guaranties** - The following guaranties of payment and/or performance were provided as an inducement to Lehman to make the Loan:

- Completion Guaranty from Kenneth A. Jowdy ("**Jowdy**") in favor of Lender that guaranties the performance and completion of the Improvements by the Maturity Date and the full reimbursement of Lender's costs in connection with completing construction, paying or discharging liens. The guarantied obligations are triggered upon Borrower's failure to complete construction in accordance with the Loan Agreement or upon an Event of Default.
- Recourse Guaranty from Jowdy in favor of Lender that guaranties the payment of all Recourse Obligations (as defined in the Note).
- Repayment Guaranty from Jowdy, Diamante Cabo San Lucas LLC ("**Diamante**"), Baja Ventures 2006, LLC ("**Baja**"), Diamante Properties, LLC ("**Diamante Properties**"), CSL Properties 2006, LLC ("**CSL**"), and KAJ Holdings, LLC ("**KAJ**") in favor of Lender.

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Pursuant to 17 C.F.R. § 200.83

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The Repayment Guaranty provides for the full repayment of the Loan to Lender. The Repayment Guaranty is secured by the following pledges: (i) Pledge and Security Agreement by Jowdy and Diamante in favor of Lender pledging each parties' membership interests in Borrower<sup>1</sup>; (ii) Pledge and Security Agreement by Jowdy, Baja, Diamante, CSL, and KAJ in favor of Lender pledging each parties' respective membership interests in Diamante.

- Environmental Indemnity Guaranty from Jowdy and Borrower indemnifying Lender against any Environmental Claims and related environmental matters.

**Equity:** Based on the summary information provided, Jowdy has invested approximately \$8,400,000 USD in equity.

**Maturity Date:** The Loan matures on March 31, 2009 ("**Maturity Date**"). Borrower may elect to extend the Maturity Date for two (2) additional terms of one (1) year each, subject to Borrower's satisfaction of certain conditions set forth in the Loan Agreement, which conditions include, *inter alia*, the payment by Borrower of an amount which, when aggregated with all payments theretofore made on account of the Loan or any Mezzanine Loan<sup>2</sup> equals \$125,000,000.

**Additional Payment:** The Loan Agreement provides that an additional fee shall be paid by Borrower to Lender, subject to the Order or Priority, on (i) the Maturity Date or the earlier repayment of all or any portion of the Loan by acceleration or otherwise, (ii) upon an extension of the Loan, and (iii) upon any partial release of the lien of the Trust Agreement ("**Additional Fee**"). The Additional Fee shall equal the greater of (i) \$125,000,000, less all interest theretofore paid by Borrower on account of the Loan and any Mezzanine Loan and (ii) an amount equal to a cumulative return of 25% on the principal amount of the Loan and any Mezzanine Loan outstanding from time to time, calculated for any period on the basis of a 360 day year and the actual number of days elapsed in such period, compounded monthly.

**Future Funding Obligations:** According to the summary information provided, approximately \$18,000,000 USD remains unfunded. As of October 10, 2008, Borrower submitted a draw request package requesting a current advance of \$1,926,020.05 for soft costs and hard costs associated with funding golf course and golf facility construction, as well as improvements to Diamante Boulevard, utility improvements, a desalinization plant, and golf villa utilities.

#### **Ownership Structure (Borrower and Guarantors)**

**Borrower** - Cabo San Lucas S. De. R.L. De C.V., a Mexico limited liability company, the owner of the Project described above.

<sup>1</sup> Note that Jowdy and Diamante executed and delivered a pledge agreement governed by U.S. law and a pledge agreement governed by Mexican law.

<sup>2</sup> Based on the information provided in the data room, no Mezzanine Loan appears to have been made, however, title and UCC searches should be completed for purposes of verification.

- The members of Borrower are Diamante (99% membership interest) and Jowdy (1% membership interest). Jowdy is designated as the sole administrator.

**Guarantors:**

- Diamante Cabo San Lucas LLC, a Delaware limited liability company
  - The members of Diamante are Baja (39% membership interest), Diamante Properties (13% membership interest), CSL (8% membership interest), and KAJ, 40% membership interest). Jowdy is Managing Member.
- ~~Baja Ventures 2006, LLC, a Delaware limited liability company~~
  - The sole member and manager of Baja is Phillip A. Kennar.
- Diamante Properties, LLC, a Delaware limited liability company
  - The members of Diamante are multiple individuals and Somerset Properties, LLC.
- CSL Properties 2006, LLC, a Delaware limited liability company
  - The members of CSL are multiple individuals. The Managing Member is Philip Kennar.
- KAJ Holdings, LLC, a Delaware limited liability company
  - The sole member and manager of KAJ is Jowdy.

**Risk Factors (Questions)**

1. Construction and Development Risks.
  - Without additional funding (which is estimated to be \$18,000,000 USD), the balance of the pre-development work will not be completed. While the summary information provided indicates that roads and certain desalinization plants have been completed and the golf course is over 80% complete, without the completion of the basic infrastructure, sales of developable lots for the future development of the Project will likely be inhibited. Since sales of developable lots constitute the anticipated proceeds for repayment of the Loan, repayment may be hindered.
  - Based on the summary information provided, the Project anticipates the need to extend development into dune areas along the shore - which work, to date, has not been permitted. To the extent the dune area is critical to the overall development of the Project, there is potential risk in additional costs and/or delays attributable to the permitting process

required in connection with obtaining permits that allow construction and development in the dunes.

- o Delays in the availability of utilities and in completing infrastructure that supports the developable lots will likely delay sales.

2. Market and Economy Risks.

- o While Cabo San Lucas is growing in popularity as a tourist destination in Mexico, risks associated with development in foreign markets should be considered, particularly given current market conditions. Additionally, given the location of the Project along the Pacific Coast of Cabo (as opposed to a location within the hub of Cabo), the Project is outside of the area of significant developments attracting tourists and buyers of second homes.
- o While the terms of the Loan include the significant "Additional Payment", query the ability of Borrower to find funding of the Additional Payment given current financial market conditions.

**Missing Items Needed for Review**

- A. Copies of any amendments to the original loan documents (or documents related thereto), if any.
- B. Organizational documents for Borrower.
- C. Agreements relating to the predevelopment/development of the Project, including without limitation and each as applicable:
  - 1. Construction Documents and Budgets
  - 2. Architect Agreements
  - 3. Development Agreements
  - 4. Declaration of Covenants, Conditions or Restrictions
  - 5. Agreements with third parties relating to operations of the Project (e.g. golf course)
- D. Current statement showing allocation of amounts not yet funded under the Loan (particularly as they relate to approved budgets).
- E. Evidence of title insurance for full Loan Amount.